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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

In the matter of:

) DOCKET NO. S-03486A-02-0000

)
) DAVID R. KRIZMAN,
) 3620 N. Lynford Place
) Tucson, Arizona 85749

) Securities Division
) Post-Hearing Memorandum
)
)
)

) Respondent.
)
)

The Securities Division ("Division") of the Arizona Corporation Commission through this Memorandum submits a proposed opinion and order, attached hereto and incorporated herein as Exhibit A, setting forth proposed findings of fact, conclusions of law and orders.

The Division is providing a single copy of a floppy disc containing the proposed opinion and order to the Hearing Officer for his convenience. No other copies in floppy disc format are being provided to any other party.

Respectfully submitted this 27th day of January, 2003.

TERRY GODDARD
Attorney General
Consumer Protection and Advocacy Section

By 

Phillip A. Hofling
Special Assistant Attorney General
Moirra McCarthy
Assistant Attorney General
Attorneys for the Securities Division of the
Arizona Corporation Commission

Arizona Corporation Commission
DOCKETED

JAN 27 2003

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1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
2 filed this 27th day of January 2003, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 27th day of January 2003, to the office of:

9 Mr. Marc Stern
10 Hearing Officer
11 Arizona Corporation Commission/Hearing Division
12 1200 West Washington
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed
15 this 27th day of January 2003, to:

16 Walter L. Baumgardner, Esq.
17 Musilli, Baumgardner & Parnell, P.C.
18 24001 Greater Mack Avenue
19 St. Clair Shores, Michigan 48080

20 Attorney for Respondent Krizman

21 By John A. A. A.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 In the matter of:) DOCKET NO. S-03486A-02-0000
9)
10 DAVID R. KRIZMAN)
11 3620 N. Lynford Place)
12 Tucson, Arizona 85749)
13) DECISION NO.
14 Respondent.)
15)
16) **Securities Division Proposed**
17) **OPINION AND ORDER**

18 DATE OF PRE-HEARING CONFERENCE: July 11, 2002
19 DATE OF HEARING: December 11, 2002
20 PLACE OF HEARING Phoenix, Arizona
21 PRESIDING ADMINISTRATIVE LAW JUDGE: Marc E. Stern
22 APPEARANCES: Musilli, Baumgardner & Parnell, P.C.,
23 by Walter L. Baumgardner, on behalf
24 of Mr. David R. Krizman;
25 Mr. Phillip A. Hofling, Special
26 Assistant Attorney General, on behalf
of the Securities Division of the
Arizona Corporation Commission.

27 **BY THE COMMISSION;**

28 On May 31, 2002, the Securities Division ("Division") of the Arizona Corporation
29 Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against David R.
30 Krizman ("Respondent") in which the Division alleged multiple violations of the Arizona Securities

EXHIBIT

A

1 Act ("Act") in connection with the offer and sale of securities in the form of viatical settlements and/or
2 investment contracts.

3 Respondent Krizman was duly served with a copy of the Notice.

4 On June 18, 2002, Walter L. Baumgardner, a Michigan attorney, filed a request for hearing for
5 Respondent.

6 On June 25, 2002, by Procedural Order, a pre-hearing conference was scheduled for July 11,
7 2002 and Mr. Baumgardner was directed to comply with Rule 33(d) of the Arizona Supreme Court.

8 On July 11, 2002, the initial pre-hearing conference took place as scheduled with counsel for
9 the Division present. Neither Respondent nor Respondent's counsel appeared. Counsel for the
10 Division indicated that settlement negotiations were ongoing and as a result, requested a hearing be
11 scheduled in 60 to 90 days if a settlement was not approved in the interim.

12 On July 12, 2002, by Procedural Order, a hearing was scheduled for October 1, 2002.

13 On September 27, 2002, the Division filed a Motion to Continue the proceeding for an
14 additional 60 days as the parties attempted to finalize a Consent Order to be approved by the
15 Commission.

16 On September 30, 2002, by Procedural Order, the hearing was rescheduled for December 11,
17 2002 at 9:30 A.M. The parties were further directed to have exchanged witness and documentary
18 evidence lists and to have filed the same with the Hearing Officer by December 2, 2002.

19 On November 20, 2002, the Division filed a Motion to Allow for Telephonic Testimony.
20 Respondent did not oppose the Motion, the Motion thus being granted.

21 On December 4, 2002, the Division filed its List of Witnesses and Documentary Evidence.
22 Respondent did not file a List of Witnesses and Documentary Evidence.

23 On December 11, 2002, a full public hearing was commenced before a duly authorized
24 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Counsel for the
25 Division appeared. Neither Respondent nor Respondent's counsel appeared for the hearing;
26

1 therefore Respondent presented no evidence during the proceeding to rebut the evidence offered by
2 the Division.

3 In light of Respondent's nonappearance, the Division presented an abbreviated case.
4 Testimony was taken from four witnesses and nineteen exhibits were admitted into evidence during
5 the course of the proceeding.

6 The Division called two Division employees, Mr. Robert Jordon, special investigator, and
7 Mr. Michael Donovan, senior financial institution examiner. Mr. Donovan was offered as an expert
8 witness. In addition, the Division called two investor witnesses, Mrs. Lupe Cardenas and Mrs.
9 Elaine Haber.

10 * * * * *

11 Having considered the entire record herein and being fully advised in the premises, the
12 Commission finds, concludes, and orders that:

13 **FINDINGS OF FACT**

14 1. It was established by the record that Respondent David R. Krizman whose last
15 known address is 3620 N. Lynford Place, Tucson, Arizona 85749, was a securities salesman registered
16 in Arizona from August 21, 1997 through March 1, 2002 in association with securities dealer
17 SunAmerica Securities, Inc. ("SunAmerica"). (Hearing Transcript ("HT") page 8 Line 16 through 20
18 ("8/16-20")).

19 2. On April 8, 2002, the Division issued a subpoena to Respondent Krizman requiring him to
20 appear and give testimony and produce documents relating to his viatical settlement sales. (HT 9/25;
21 10/1-6). (Securities Division Exhibit S-18 ("Ex S-18")). Respondent Krizman appeared at the
22 Division's offices on May 1, 2002, and testified under oath (Examination Under Oath "EUO") and
23 produced documents. (HT 10/3-9).

24 3. Respondent Krizman created an entity called Advanced Funding. (HT 12/20-21). The purpose
25 of Advanced Funding was to keep his viatical settlement sales separate and independent from his
26 relationship with SunAmerica. (HT 12/9-25; 13/1-4).

4. On May 1, 1998, Advanced Funding through Respondent Krizman, entered into a Sales Agent Agreement (the "Alpha Agreement") with The Alpha Capital Group, LLC, 104 E. 40th Street, Suite 703, New York, NY 10016 ("Alpha"), for the purpose soliciting and accepting orders for viatical settlements offered by Alpha (the "Alpha viaticals"). (HT 15/5-9, 22-25; 16/1-13). (Ex S-2).

Paragraph V. of the Alpha Agreement provided for a commission payment to its agent of 15% of the amount of money raised by the agent for each contestable viatical policy transaction. (Ex S-2). If the transaction involved a non-contestable policy, then the commission rate decreased to 8%. (Ex S-2).

5. Respondent Krizman furnished documents during his EUO which show he sold Alpha viaticals to six Arizona residents. Respondent Krizman furnished copies of agreements (the "Agency Agreements") entered into between Respondent Krizman, Alpha and four of his Arizona clients, Lupe Cardenas, Elaine Haber (formerly Green), Gloria Martinez and Joan Towner, for the purchase of contestable Alpha viaticals. (HT 18/13-25; 19/3-13; 20/9-25; 21/1-8). (Ex S-3 through S-8)

6. Additional documents provided by Respondent Krizman during his EUO establish that a fifth Arizona resident, Steven Weinstein, purchased contestable Alpha viaticals from Respondent Krizman. (HT 18/13-20; 19/7-13; 20/3-8). (Ex S-3, 4 and 9).

7. A sixth Arizona investor, Russell Le Blanc, filed a complaint with the Division concerning his purchase of contestable Alpha viaticals through Respondent Krizman. (HT 23/5-8). He included with his complaint a copy of an Agency Agreement reflecting his viatical purchase. (HT 22/15-25; 23/5-8). (Ex S-10).

8. The evidence establishes Respondent Krizman sold viatical settlements to the above identified Arizona residents while he was associated with SunAmerica as a registered securities salesman person. These six investors invested a total of \$432,215.62 as follows: (Ex S-4 through S-10).

<u>Investor</u>	<u>Date of Agency Agreement</u>	<u>Amount Invested</u>
Russell E. Le Blanc	May 6, 1998	\$184,000.00
Lupe S. Cardenas	May 7, 1998	\$58,715.62

1	Steven Weinstein	June 9, 1998	\$97,000.00
2	Gloria M. Martinez	June 15, 1998	\$35,000.00
3	Joan Towner	May 11, 1998	\$20,000.00
4	Elaine B. Haber	August 25, 1998	\$45,000.00
5	(formerly Elaine B. Green Survivors Trust)		

6 9. Testimony by Division special investigator Robert Jordon established that Alpha was not
7 registered in any capacity with the Division and that the Alpha's viaticals sold to the Arizona
8 investors were not registered as securities with the Division and that they were not exempt from
9 registration. (HT 17/17-22).

10 10. Documents provided by Respondent Krizman during his EUO establish he was paid
11 commissions totaling \$31,339.36 for the Alpha viatical purchases made by Cardenas, Martinez,
12 Towner and Weinstein. (HT 24/2-21; 31/15-20). (Ex S-11(a) through S-11(g) and S-19).

13 11. The Division maintained that Respondent Krizman earned an additional \$33,225.00 in
14 commissions from the Alpha viatical purchases made by investors Haber and Le Blanc. On this
15 issue the Division offered Respondent Krizman's EUO testimony wherein he stated he earned a
16 15% commission on his viatical sales, (HT 25/11-15), Respondent Krizman's EUO testimony
17 wherein he stated that one commission check stub was missing, (HT 24/3-10), and the Agency
18 Agreements entered into by Haber and Le Blanc which were designated as contestable thereby
19 entitling Respondent Krizman to a 15% commission under the terms of paragraph V. of the Alpha
20 Agreement. (HT 23/2-4; 27/15-25; 28/1-8; 31/15-25). (Ex S-2, 8, 10 and 19). There is sufficient
21 evidence on the record that Respondent Krizman earned a 15% commission totaling \$33,225.00 on
22 the Haber and Le Blanc Alpha viatical purchases.

23 12. The Division offered the testimony of Alpha viatical investor Mrs. Lupe Cardenas. Mrs.
24 Cardenas is a 74 year old retired secretary/bookkeeper from Tucson with a high school degree and
25 one year of commercial training. (HT 33/11-25; 34/1-4).

26

1 13. Mrs. Cardenas is an inexperienced investor. (HT 36/3-6). Until she met Respondent
2 Krizman her investment experience consisted of bank certificates of deposit. (HT 36/7-10). After
3 meeting Respondent Krizman, who at the time was selling stocks and bonds through SunAmerica
4 at her bank, Mrs. Cardenas began investing in stocks and bonds through Respondent. (HT 36/7-14).

5 14. According to Mrs. Cardenas, because her stock investments were declining in value, she
6 asked Respondent Krizman if he could invest her in something safer. (HT 36/17-32). Respondent
7 Krizman met with Mrs. Cardenas at her home and discussed the Alpha investment program. (HT
8 36/23-25; 37/1-4; 39/3-4). At the end of that visit she signed the Agency Agreement investing
9 \$58,715.02 on May 7, 1998. (HT 34/9-18). (Ex S-5).

10 15. In making her decision to invest, Mrs. Cardenas relied solely on Respondent Krizman's
11 expertise and her trust in him. (HT 38/21-25; 37/15-16). In addition, there were several other
12 factors that were important to her in deciding to invest in the Alpha viatical. (HT 37/5-16). She
13 wanted to invest her money in something safer than stocks. (HT 37/7-9). After speaking with
14 Respondent Krizman, she believed the Alpha viatical had no risk and was completely safe, (HT
15 37/9-15); that she could not lose her investment because she understood she was buying life
16 insurance. (HT 34/9-15). She does not recall hearing the term viatical and testified she does not
17 know what a viatical is or how it works. (HT 34/7-8; 36/15-25; 37/1-4). In fact, she stated she
18 panicked after she invested when she then learned she had invested in insurance policies insuring
19 the lives of persons with AIDS. (HT 38/6-14). Respondent Krizman advised her to set her Alpha
20 investment aside and not worry about it. (HT 38/6-14). She did not understand that the insured had
21 to die before she could receive the return of her investment. (HT 40/1-8).

22 16. Because she was 70 at the time, Mrs. Cardenas knew she would need access to this money
23 within two years as these were IRA funds upon which she would need to take mandatory
24 withdrawals and pay taxes. (HT 37/10-15). She also believed that when the investment matured, it
25 would pay a lot more than she was getting from her stocks. (HT 39/17-22). Respondent Krizman
26

1 told her that liquidating her investment would not be a problem as she could retrieve her money
2 within two years. (HT 37/14-15; 40/1-11).

3 17. Respondent Krizman did not discuss with Mrs. Cardenas any potential investment risks
4 associated with the Alpha viatical. (HT 37/17-19). He never discussed how the insured/viator's life
5 expectancy might affect her investment return. (HT 39/15-22). Mrs. Cardenas does not understand
6 the difference between a contestable or uncontestable policy and Respondent Krizman never
7 brought this issue to her attention. (HT 37/20-25; 38/1).

8 18. Mrs. Cardenas' 1998 Alpha viatical has not matured or paid. (HT 38/18-20).

9 19. Mrs. Elaine Haber (formerly Green), another Tucson resident, testified about her viatical
10 purchase through Respondent Krizman. Mrs. Haber is 68-year-old college-educated widower who
11 has never been employed. (HT 41/11-15; 43/7; 47/17-25; 48/1-8).

12 20. Mrs. Haber described herself as an inexperienced investor with limited investment
13 experience. (HT 43/2-4). Prior to associating with Respondent Krizman, Mrs. Haber's investment
14 experience consisted of investments made by her husband. (HT 43/8-12). She merely agreed to her
15 husband's decisions without paying attention to any of the investment details. (HT 43/13-20). Mrs.
16 Haber's husband died in 1998. (HT 46/9-10). Since her husband's death the only other investment
17 besides the Alpha viatical she has made on her own involved the purchase of shares in an Eaton
18 Vance mutual fund through Respondent Krizman. (HT 42/20-24; 43/6-7).

19 21. Mrs. Haber invested \$45,000 in an Alpha viatical on August 25, 1998. (HT 42/1-18). (Ex S-
20 8).

21 22. Mrs. Haber testified that a number of factors entered into her decision to invest in the Alpha
22 viatical. Mrs. Haber trusted Respondent Krizman and her trust was heightened by the fact that she
23 was in a vulnerable state of mind at the time of her purchase because she was still mourning and
24 grieving her husband's death. (HT 46/11-17; 47/1-3). Mrs. Haber understood she was investing in
25 a life insurance policy insuring a terminally ill person. (HT 43/21-25; 44/1-6). She also understood
26 that when the insured died, she would get the policy value. (HT 43/24-25; 44/1). She thought that

1 she would be helping the terminally ill person with her investment funds going to that person. (HT
2 44/1-3).

3 23. Other factors that were important to her included her understanding she would double her
4 money, (HT 44/9-10), it was a good investment and that if it did not pay during her lifetime, her
5 children would definitely receive its benefits. (HT 44/10-16). She also understood that she could
6 sell the investment at any time and in fact tried unsuccessfully to sell it when she read a newspaper
7 article stating viaticals were poor investments. (HT 45/3-13).

8 24. Respondent Krizman never discussed any potential risks associated with the Alpha viatical
9 investment including any risk associated with purchasing a contestable policy. (HT 44/17-24). In
10 fact, Mrs. Haber recalls no discussion about the fact that she was purchasing a contestable policy.
11 (HT 44/19-20).

12 25. Mrs. Haber testified her Alpha viaticals have not paid because Alpha went bankrupt. (HT
13 45/14-24).

14 26. The Division offered Mr. Michael Donovan as an expert witness on general securities
15 practices. (HT 55/24-25; 56/2-3). Mr. Donovan has twenty-two years experience in the securities
16 industry; sixteen and one-half years as a registered securities salesman and five and one-half years
17 as a senior financial institution examiner. (HT 51/2-5). Mr. Donovan has held a general securities
18 license, Arizona insurance license and real estate salesman's license. (HT 51/15-25; 52/1-2). He
19 has received training from Merrill Lynch and the Division and has taken various examinations
20 relating to the securities industry in general and the sales practices of securities salesmen. (HT
21 51/13-25; 52/1-25; 53/14-21).

22 27. Mr. Donovan testified that he was familiar with the National Association of Securities
23 Dealers ("NASD") Conduct Rules ("Conduct Rules") and in particular the Conduct Rules
24 governing private securities transactions and outside business activities. (HT 54/13-25; 55/1-7).
25 Since SunAmerica is a NASD member firm, the Conduct Rules apply to SunAmerica and
26 Respondent Krizman as a SunAmerica salesmen. (HT 56/4-22).

1 28. The Conduct Rules prohibit sales persons from selling products that are not approved by the
2 salesman's securities firm. (HT 55/4-7). A securities salesman is required to notify and receive
3 approval from the firm prior to selling any product not approved by the firm. (HT 55/4-7). Selling
4 an unapproved product is a practice known as "selling away". (HT 55/8-15). Arizona has a similar
5 rule prohibiting selling away found at A.R.S. §44-1962(10), Rule R14-4-130(7). (HT 55/16-23).

6 29. Mr. Donovan testified he reviewed documents furnished by SunAmerica including sections
7 of SunAmerica's sales practice manual in effect at the time Respondent Krizman effected the
8 Alpha viatical sales. (HT 56/23-25; 57/1-2). (Ex S-12 through S-15). SunAmerica's sales practice
9 manual, sections titled "Prohibited Sales and Business Practices", "Outside Business Activities",
10 and "Private Securities Transactions" clearly prohibited selling products, including alternative
11 investment products, that were not approved for sale. (HT 57/22-25; 58 1-25; 59/1-25; 60/1-11).
12 (Ex S-12 through S15). SunAmerica also prohibited its salesmen from accepting compensation
13 directly or indirectly from other than SunAmerica in connection with any securities transaction.
14 (HT 59/5-11).

15 30. During his EUO, Respondent Krizman testified that outside business activities and private
16 securities transactions were topics covered by SunAmerica in literature and seminars presented to
17 its sales representatives and that he was aware of the selling away prohibitions. (HT 30/8-16). He
18 further testified that he never approached SunAmerica about viaticals. (HT 30/19-21).

19 31. SunAmerica required its sales persons to make annual disclosure filings and conducted
20 periodic on-site compliance audits of its branch offices. (HT 29/7-25; 61/11-15). Confirming
21 Respondent Krizman's testimony that he never approached SunAmerica about the Alpha viaticals,
22 Mr. Donovan testified he saw no evidence that Respondent Krizman disclosed his Alpha viatical
23 activities to SunAmerica or that SunAmerica discovered his viatical sales activities during their
24 compliance audits of the branch office where Respondent Krizman worked. (HT 61/16-25; 62/1-5).
25 The Alpha viaticals were not an approved product for sale by SunAmerica sales persons. (HT
26 62/11-15).

1 32. Mr. Donovan reviewed the NASD's Central Registration Database ("CRD") which showed
2 that Alpha viatical investor Russell Le Blanc filed a complaint with SunAmerica on February 15,
3 2002 against Respondent Krizman concerning viatical purchases. (HT 63/1-5). According to Mr.
4 Donovan, the CRD records also show that SunAmerica reported that it conducted an internal
5 review on February 25, 2002 into a customer complaint and as a result of that review it terminated
6 Respondent Krizman for selling a product that was not on the approved list and because the
7 requisite disclosures had not been submitted for review and approval. (HT 63/6-17). Though
8 SunAmerica made no specific reference to the Alpha viaticals, it was Mr. Donovan's opinion that
9 viewing the CRD records in their entirety, Respondent Krizman did not conform to the selling
10 away rules and that SunAmerica terminated Respondent Krizman for selling away the Alpha
11 viaticals.

12 33. Since July 18, 2000, the Act has defined a viatical settlement as a security. Additionally, the
13 Arizona Court of Appeals in Siporin v. Carrington, 23 P.3d. 92 (April 19, 2001), concluded that
14 viatical settlements sold to an Arizona investor in 1997 fell within the definition of an investment
15 contract and were thus, securities under the Act. While this case conflicts with the federal Court of
16 Appeals decision for the District of Columbia in Sec. & Exch. Comm'n v. Life Partners, Inc., 87
17 F.3d 536 (D.C. Cir.) *pet. for reh. en banc denied*, 102 F.3d 587 (D.C. Cir. 1996), the Siporin court
18 clearly stated that reliance on Life Partners was a "voluntarily assumed business risk" Siporin, 23
19 P.3d. 92, 99. Furthermore the Life Partners case is neither binding nor persuasive and we believe
20 Arizona investors are better and more appropriately protected by the Arizona decision. The fact
21 that there had not been an amendment to the Act to define a viatical settlement as a security prior to
22 the Alpha viatical sales by Respondent Krizman does not preclude finding that the Alpha viaticals
23 were securities as investment contracts subject to regulation under the Act and that Respondent
24 Krizman sold securities that were not registered with the Division or exempt from registration.

25 34. The evidence also supports a finding that Respondent Krizman was aware that SunAmerica
26 prohibited the sale of investment products not on SunAmerica's approved list. (HT 30/15-16).

1 Respondent Krizman was aware that SunAmerica had no knowledge of his Alpha viatical sales
2 since he created Advanced Funding for the express purpose of keeping the Alpha viatical sales
3 separate from his SunAmerica securities business. (HT 12/12-22; 30/19-21). He also knew the
4 Alpha viaticals he sold were not recorded on the books and records of SunAmerica. (HT 30/15-16).

5 35. With respect to the allegations by the Division that Respondent Krizman engaged in fraud
6 in the sale of securities, the evidence supports finding Respondent Krizman violated A.R.S. §44-
7 1991(A)(2). Though Respondent Krizman told investors they would double their money, he
8 omitted to state material facts regarding risks that could substantially impact the return on the
9 investment. Respondent Krizman did not discuss any risks associated with the Alpha viaticals such
10 as that contestable policies were subject to forfeiture with the potential loss of the entire investment
11 or that the longer the viator/insured lived, the lower the rate of return. (HT 37/17-23; 39/15-22;
12 44/17-24). Respondent Krizman mislead investors into believing the Alpha viaticals were entirely
13 safe high-yield investments. Respondent Krizman mislead investors into believing they could sell
14 the Alpha viaticals within two years which was not true as there was no public market for these
15 investments. (HT 37/10-16; 40/1-11; 45/3-13). Furthermore, Respondent Krizman failed to advise
16 investors they had a choice between contestable policies and non-contestable policies. (HT 37/20-
17 25; 38/1; 44/21-25; 45/1-2).

18 36. With respect to the Division's allegation that he recommended to customers the purchase of
19 a security without reasonable grounds to believe such recommendations were suitable, the Division
20 elected to forgo presenting any evidence to support a violation of the Act's suitability rule.

21 37. With respect the offer and sale of viaticals, we believe Respondent Krizman should be
22 ordered to permanently cease and desist from violating the Act.

23 38. With respect to restitution, we believe Respondent should make restitution to each of the
24 six identified Arizona investors in the amount each invested for a total restitution obligation of
25 \$432,215.62.

1 39. With respect to administrative penalties for violations of the Act by Respondent Krizman,
2 we believe that because Respondent violated the Act's registration provisions, the Act's Unethical
3 and Dishonest practices rule on selling away and the Act's anti-fraud provisions, Respondent
4 Krizman should be liable for an administrative penalty of \$15,000.

5 40. With respect to revoking Respondent Krizman's securities salesman's registration, the
6 evidence supports finding he violated the Act's anti-fraud provisions which warrants revoking his
7 securities salesman's registration.

8 CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
10 Constitution and A.R.S. §44-1801 et seq.

11 2. The investments in the form of viatical settlements offered and sold by Respondent Krizman
12 are investment contracts and thus securities within the meaning of A.R.S. §44-1801(26).

13 3. The viatical settlements were neither registered nor exempt from registration, in violation of
14 A.R.S. §44-1841.

15 4. Respondent Krizman sold unregistered securities in violation of A.R.S. §44-1841.

16 5. Respondent Krizman's conduct in connection with the offer and sale of viaticals violated
17 A.R.S. § 44-1991(A)(2).

18 6. Respondent Krizman's conduct in connection with the offer and sale of viaticals violated
19 A.R.S. §44-1962(10), Rule R14-4-130(7).

20 7. Respondent Krizman violated the Act and should cease and desist from any future violations
21 of the Act pursuant to A.R.S. §44-2032.

22 8. Respondent Krizman violated the Act and should make restitution to each of the six
23 identified Arizona Alpha viatical investors for a restitution obligation totaling \$432,215.62 pursuant
24 to A.R.S. §44-1962 and 2032 in accordance with A.C.C. R14-4-208(C) including interest pursuant
25 to A.R.S. §44-1201.
26

1 9. Respondent Krizman should be assessed administrative penalties pursuant to A.R.S. §44-
2 2036 as follows: for the violations of A.R.S. §44-1841 the sum of \$5,000; for the violations of
3 A.R.S. §44-1991(A)(2) the sum of \$5,000; and for the violations of A.R.S. §44-1962(10), Rule
4 R14-4-130(7) the sum of \$5,000.

5 10. Respondent Krizman violated the Act and his securities salesman's registration should be
6 revoked pursuant to A.R.S. §44-1962.

7 **ORDER**

8 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
9 under A.R.S. §44-2032, Respondent Krizman shall cease and desist from any future violations of the
10 Act.

11 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission
12 under A.R.S. §44-1962 and 2032 and A.C.C. R14-4-308, Respondent Krizman shall make
13 restitution consistent with Findings of Fact No. 8 and Conclusion of Law No. 8 payable in full 90
14 days following the date of this Decision.

15 IT IS FURTHER ORDERED that restitution shall bear interest at the statutory judgment rate
16 in effect as of the date of this Decision for the period beginning from the date of each investment to
17 the date of payment of restitution by Respondent Krizman.

18 IT IS FURTHER ORDERED that all restitution payments shall be deposited into an interest-
19 bearing account(s) if appropriate, until distributions are made.

20 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission
21 under A.R.S. §44-2036, Respondent Krizman shall pay administrative penalties for the violations of
22 A.R.S. §44-1841 the sum of \$5,000; for the violations of A.R.S. §44-1991(A)(2) the sum of \$5,000;
23 and for the violations of A.R.S. §44-1962(10), Rule R14-4-130(7) the sum of \$5,000.

24 IT IS FURTHER ORDERED that the administrative penalties hereinabove shall be made
25 payable to the State Treasury for deposit in the general fund for the State of Arizo
26

39. With respect to administrative penalties for violations of the Act by Respondent Krizman, we believe that because Respondent violated the Act's registration provisions, the Act's Unethical and Dishonest practices rule on selling away and the Act's anti-fraud provisions, Respondent Krizman should be liable for an administrative penalty of \$15,000.

40. With respect to revoking Respondent Krizman's securities salesman's registration, the evidence supports finding he violated the Act's anti-fraud provisions which warrants revoking his securities salesman's registration.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. §44-1801 et seq.

2. The investments in the form of viatical settlements offered and sold by Respondent Krizman are investment contracts and thus securities within the meaning of A.R.S. §44-1801(26).

3. The viatical settlements were neither registered nor exempt from registration, in violation of A.R.S. §44-1841.

4. Respondent Krizman sold unregistered securities in violation of A.R.S. §44-1841.

5. Respondent Krizman's conduct in connection with the offer and sale of viaticals violated A.R.S. § 44-1991(A)(2).

6. Respondent Krizman's conduct in connection with the offer and sale of viaticals violated A.R.S. §44-1962(10), Rule R14-4-130(7).

7. Respondent Krizman violated the Act and should cease and desist from any future violations of the Act pursuant to A.R.S. §44-2032.

8. Respondent Krizman violated the Act and should make restitution to each of the six identified Arizona Alpha viatical investors for a restitution obligation totaling \$432,215.62 pursuant to A.R.S. §44-1962 and 2032 in accordance with A.C.C. R14-4-208(C) including interest pursuant to A.R.S. §44-1201.

10. Respondent Krizman violated the Act and his securities salesman's registration should be revoked pursuant to A.R.S. §44-1962.

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. §44-2032, Respondent Krizman shall cease and desist from any future violations of the Act.

IT IS FURTHER ORDERED that restitution shall bear interest at the statutory judgment rate in effect as of the date of this Decision for the period beginning from the date of each investment to the date of payment of restitution by Respondent Krizman.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. §44-2036, Respondent Krizman shall pay administrative penalties for the violations of A.R.S. §44-1841 the sum of \$5,000; for the violations of A.R.S. §44-1991(A)(2) the sum of \$5,000; and for the violations of A.R.S. §44-1962(10), Rule R14-4-130(7) the sum of \$5,000.

IT IS FURTHER ORDERED that the administrative penalties hereinabove shall be made payable to the State Treasure for deposit in the general fund for the State of Arizona.

1 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission
2 under A.R.S. §44-1962, Respondent Krizman's securities salesman's registration is revoked.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.
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6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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9 CHAIRMAN COMMISSIONER COMMISSIONER
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12 COMMISSIONER COMMISSIONER
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14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
15 Executive Secretary of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capital, in the City of
Phoenix, this _____ day of _____, 2003
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18

19 BRIAN C. McNEIL
EXECUTIVE SECRETARY
20
21

22 DISSENT _____
23
24

25 DISSENT _____
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